IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 362 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BADARMAL M JAIN

Versus

DAHIBEN GUNVANTLAL PARMAR

Appearance:

MR AMAR P DAVE for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/04/2001

ORAL JUDGEMENT

#. Notice of this petition has been served on the respondent no.1. None has appeared on his behalf, nor any counter affidavit has been filed. As such, the petition is proposed to be disposed of finally at the admission stage.

#. Learned counsel for the petitioner has been heard. The impugned order dated 25-8-2000 passed by the authority under the Payment of Wages Act has been examined.

#. The only grievance of the learned counsel for the petitioner in this petition is that, point no.3 for determination was disposed of by the authority under a contradictory order. Point no.3 is, whether the application is barred by limitation. Few other preliminary objections were raised. Ultimate operative order passed by the authority is that, preliminary objection applications preferred by the opponent at Ex.10 and Ex.11 are hereby rejected. It further directed that further hearing of the matter is to be fixed on 28-9-2000.

#. Learned counsel for the petitioner has drawn my attention to page-10 of the English translation of the impugned order. After going through this order, it is found that, on the preliminary objection regarding bar of limitation, the authority found that the application was with respect to the wages due upto 20-11-1998. As per the provisions of Sec.15(2) of the Payment of Wages Act, the applicant was required to file such application within 12 months from the date the amount fell due. Obviously, the application was not filed within 12 months from the date the amount fell due. The authority further found that no application for condonation of delay had been preferred along with the application. The authority considered the proviso to sec.15(2) of the Act and was of the view that it can entertain the same if sufficient cause is shown as to why the application could not be preferred within 12 months. Oral objections were also taken into consideration. The authority found that, in order to find out the true facts as to for what reasons delay had occurred in filing such application and also whether separate application for condonation of delay was required to be moved, these matters require consideration and the same can not be decided without recording preliminary evidence. Therefore, at this stage, this issue also can not be decided right now. If, this is the view of the authority under the Payment of Wages Act then, it can not be said that the plea of limitation was rejected under the impugned order. What the authority meant in the impugned order is that, it required further evidence in the nature of preliminary evidence for deciding the question of limitation.

#. However, admittedly, no application for

condonation of delay was moved. The proviso to Sec.15(2) of the Payment of Wages Act requires that, every such application shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of wages was due to be made as the case may be. Second proviso to sub-sec.(2) of Sec.15 provides that, any application may be admitted after the said period of 12 months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

#. On the point of furnishing sufficient cause for not making the application, the authority requires preliminary evidence in the matter. I am conscious of the fact that, in such matters preliminary objections need not be decided and all the objections should be decided alongwith the main application. But, in the instant case, if objection of bar of limitation was raised, and if it could succeed, the application could be decided without calling for the evidence and without admitting the evidence from the parties. The authority could, from the application, make up its mind, whether the cause for delay has been sufficiently explained and for this separate application is not required to be moved. If, there are grounds mentioned in the application for condonation of delay, the same may be considered by the authority in accordance with law.

#. With the above observations, the petition is partly allowed. The impugned order of the authority under the Payment of Wages Act is partly set aside in so far as it has rejected the objection regarding bar of limitation. The authority shall decide this objection as preliminary issue in accordance with law as contained under Sec.15(2) proviso 1 and 2 of the Act.

25-4-2001. [D.C. Srivastava, J.]

/sakkaf